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11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION
13

14 MORTGAGE ELECTRONIC
15 REGISTRATION SYSTEM, INC.
16 MERSCORP HOLDINGS, INC.,

17 Plaintiffs,

18 v.

19 DANIEL W. ROBINSON, DARLA J.
20 ROBINSON,

21 Defendants.
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25
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27
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Case # 2:13-cv-07142-PSG-AS
Honorable Phillip S. Gutierrez

**DEFENDANTS' POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT; OR IN THE
ALTERNATIVE FOR PARTIAL
SUMMARY JUDGMENT;
SEPARATE STATEMENT IN
SUPPORT THEREOF;
DECLARATION OF J. OWEN
MURRIN WITH EXHIBITS;
DECLARATION OF DAN
ROBINSON WITH EXHIBITS;
DECLARATION OF DARYL
WIZELMAN; EXPERT ROBERT
JANES IN SUPPORT THEREOF**

Date: March 2, 2015
Time: 1:30 p.m.
Dept. 880
Complaint Filed: 9/26/11

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Declaration of J. Owen Murrin with Exhibits

Exhibit 10	Deed of Trust
Exhibit 47	Note dated February 7, 2005
Exhibit 48	MERS Trademark Documents (thinned down)

- 1 Exhibit 51 Designation of Foreign Corp-MERSCORP
- 2
- 3 Exhibit 52 MERS® System Rules of Membership dated March 18,
- 4 2013
- 5 Exhibit 60 Electronic Tracking Agreement for Whole Loan Sale
- 6 Agreement
- 7
- 8 Exhibit 61 Electronic Tracking Agreement for Warehouse Lender
- 9
- 10 Exhibit 62 Electronic Tracking Agreement for Gestation
- 11 Exhibit 63 Answers to RFA MERSCORP Admit having no legal
- 12 interest, no beneficial interest or any aging interest in the
- 13 loan instrument, note or underlying security
- 14 Exhibit 64 Statement and Designation by Foreign Corporation,
- 15 Mortgage Electronic Reg. Systems, Inc.
- 16 Exhibit 65 MERS System Rules of Membership from Responses to
- 17 RFP

18 **Declaration of Dan Robinson with Exhibits**

- 19 Exhibit 53 Various Documents from Secretary of State- Mortg.
- 20 Electronic Reg. Systems
- 21 Exhibit 57 Articles of Incorporation Mortgage Electronic Reg.
- 22 Systems, Inc.
- 23 Exhibit 58 Secretary of State RE: MERSCORP Holdings, Inc.
- 24 Exhibit 64 Statement and Designation by Foreign Corporation,
- 25 Mortgage Electronic Reg. Systems, Inc.
- 26
- 27
- 28

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The following matters presented in this Motion for Summary (or for Partial) Judgment should eliminate all or some of Plaintiffs' claims. The claims either have no standing, and even if they do, Plaintiffs cannot demonstrate that Plaintiffs have sufficient ownership or any rights in this stage in the proceedings to avoid summary judgment. Furthermore, there are procedural matters including a lack of a Federal question which justify Summary Judgment against MERS and MERSCORP at this time. Plaintiff, Mortgage Electronic Registration Systems, Inc. is referred to herein as MERS, "MERS Delaware," and/or "Plaintiff MERS" to distinguish it from MERS California, a non-party California Corporation, doing business in California as Mortgage Electronic Registration Systems, Inc in 2005 when the Robinsons' transaction occurred. Plaintiff, MERSCORP Holdings, Inc. is referred to herein as ("MERSCORP")

II. FACTS

In February, 2005, the Robinsons bought property located at 19127 Romar Street, Northridge, California, 91324, for approximately \$1,350,000 ("Subject Property"). See, Defendants' Uncontroverted Fact "DUF" 1.

As part of that purchase, they signed a promissory note ("Note") and a deed of trust ("DOT") with a lender named United Pacific Mortgage, G.P. ("UPM"). ("DUF" 2 & 4). The Robinsons were required to sign off on all sorts of documents that they hardly understood. The Robinsons received absolutely no explanation about the documents that they were signing. No one verbally explained anything to them about Mortgage Electronic Registration Systems, Inc. (DUF 3) One of the documents called Deed of Trust (DOT") mentioned Mortgage Electronic Registration Systems, Inc. Id.

The Robinsons were never told that there were two companies by the same name: Mortgage Electronic Registration System, Inc., a California company,

1 “MERS California;” and a different but similarly named Delaware company,
 2 “MERS Delaware” or “Plaintiff MERS. The Delaware company was not registered
 3 to do business in California at the time, yet it is the Plaintiff company that is suing
 4 the Robinsons. The Robinsons were clueless about all this back in 2005 when it all
 5 went down and when they signed the Deed of Trust. (DUF 6-13)

6 The Robinsons were never told that Plaintiff MERS was a lender, a
 7 beneficiary, an agent of the lender, an agent of the beneficiary, or a nominee of the
 8 lender or anything whatsoever. (DUF 5) The Robinsons were never told MERS
 9 Delaware was a company not registered to do business in California, or that MERS
 10 Delaware was not the same company (by the same name). (DUF 6 & 7). Not until
 11 November of 2014, after this action was commenced did the Robinsons come to
 12 fully appreciate that they did not enter into an agreement with the California-
 13 registered company of the same name. (DUF 7)

14 As noted, Plaintiff MERS Delaware is the one suing the Robinsons. This
 15 company cannot demonstrate that at the time the Robinsons executed the DOT that
 16 Plaintiff MERS Delaware had the capacity to do business in California. As seen
 17 herein, as an unregistered company Plaintiff MERS could not have contracted with
 18 the Robinsons.¹ As a result, it is believed that MERS could not have acquired
 19 something while so incapacitated. And even if it could, contrary to what it said, it
 20 did not acquire any legal interest or one worthy of notice under the California
 21 Quiet Title Statutes. (See DUF 9) The lender at the time declares and agrees with
 22 the Robinsons that no interest was given to Plaintiff MERS. See Wizelman at ¶ 2.
 23 What this all means is that MERS Delaware lacks standing to sue, but even if it
 24

25 ¹ It is well-established that mutual consent is an essential contract element. See Cal.Civ. Code § 1550. “Contract
 26 formation requires mutual consent, which cannot exist unless the parties ‘agree upon the same thing in the same
 27 sense.’ ” *Bustamante v. Intuit, Inc.*, 141 Cal.App.4th 199, 208 (Cal. 2006). Further, privity of contract requires an
 28 identity of interests, or a relationship which is sufficiently close to justify application of the doctrine. See *Citizens
 for Open Access etc. Tide, Inc. v. Seadrift Assn.*, 60 Cal.App.4th 1053, 1070 (Cal. 1998). The Robinsons had mutual
 consent with UPM, but not with Plaintiff MERS as they had no idea who they were or that this MERS was involved.
 This appears to be by design. MERS is never identified nor ever explained. (DUF 3, 5). Plaintiff MERS had no
 actual privity of contract.

1 could, it possesses no interest to show that it is entitled to anything under the
2 California Quiet Title Statutes.

3 Another way of looking at it, is that Plaintiff MERS did not have the ability to
4 do business in California and the Failure of the lender to grant MERS an interest in
5 the Robinsons' property or their security caused Plaintiff MERS Delaware not to
6 have privity with any party in this case. MERS Delaware has produced no
7 documents that it has privity with any of the players at the time, or even that it is
8 the Mortgage Electronic Registration Systems, Inc. that was involved in the
9 Robinson's DOT. MERS Delaware is not mentioned in the Note (Exhibit 47).
10 Plaintiff MERS Delaware claims to be the MERS in the Robinsons' DOT (DUF
11 10), but where is the proof? For reasons discussed hereinafter, relying on the
12 Robinsons as the grantors of the interest in the DOT is putting the cart before the
13 horse. There has to be some agreement between it and the lender to obtain a valid
14 interest, no such agreement exists.

15 According to Plaintiffs, this is entirely an action for equitable relief. If so,
16 and to invoke equitable powers, Plaintiffs must show they have clean hands and
17 they cannot do this.

18 Plaintiffs engaged in (and continue to engage in) perpetrating myths about
19 their organization and who they are. They use MERS in a confusing and
20 misleading way in violation of the Lanhan Act §15 USC 1125 further reason why
21 they cannot show they have clean hands discussed below. They operate at the
22 edge of deceit and creating purposeful confusion, not just in this case but in cases
23 around the State of California as well as the United States at large. They should
24 not be able to invoke the judicial power of the United States District Courts for
25 such mischievous and deceptive ends.

26 Plaintiffs do not speak the truth about what or who it is they are and how
27 they work. They hide in the shadows and continue to attempt to whitewash
28 themselves as something they are not. This is further reason for them not having

1 clean hands. Sometimes MERS' declares itself to be a beneficiary (without
2 meeting the legal requirements of being such); sometimes MERS declares itself to
3 be a nominee/agent without a basis for it; and it has no basis in this case.
4 Sometimes when the tax man cometh, it claims no interests at all as in *Mortgage*
5 *Electronic Registration System, Inc. v Nebraska Department of Banking Finance*,
6 270 Neb. 529 (2005). So what is a party or the courts to believe? As a court of
7 equity, confronted with such things, this federal court should not try to figure such
8 confusing things out other than to determine Plaintiffs do not have clean hands and
9 the case should be dismissed. This is part of the clean hands doctrine discussed
10 below.

11 If there is such a thing as *collateral estoppel*, the Plaintiffs have made a
12 mockery of it because they are one thing today and another thing tomorrow
13 depending on what they want to happen at the time. They are thumbing their nose
14 at precedent and *stare decisis*, but are not candid to their adversaries and the court
15 about who they are and what interest they really acquire.

16 According to Daryl Wizelman, speaking for the actual lender, (DUF 9),
17 Plaintiff MERS Delaware was nothing more than a registry of borrowers'
18 information. UPM only listed MERS in the DOT as a reporting requirement. (DUF
19 10) As will be seen, Plaintiff MERS is not an operative company other than a shell
20 for its parent company. As such it does not have the capacity to own an interest. It
21 is a shell corporation with no employees, operated by or actually acting as the alter
22 ego of its parent company Plaintiff MERSCORP. For further proof of this, see
23 Expert Declaration of Robert Janes laying this out in impeccable detail. (DUF 8.)
24 Said another way, Plaintiff MERS cannot show that it possesses the kind of interest
25 that entitles it to notice under the California Quiet Title Statutes, because the way it
26 was set up, it was structurally incapable of being able to own anything or contract
27 with anyone. (*Id.*)
28

1 Plaintiff MERS Delaware uses the initials MERS, to represent “Mortgage
2 Electronic Registration System, Inc.” See reference in DOT, (Exh. 10) This is not
3 the same thing as the trademark known as MERS®, and the MERS registry, or the
4 MERS System. Those things are all assets, trademarks, and interests- all owed
5 solely by the parent company MERSCORP. See Exhibit 48.

6 The parent company of MERS Delaware is MERSCORP and it solicits lenders
7 and maintains the electronic membership database known as the “MERS®
8 System.” (See MERS Rules of Membership, Exh. 52, page (2), and /or Exh. 65
9 MERS0000036 another version). Also, as noted above, Plaintiff MERS has no
10 employees and is therefore incapable of acting on its own. (Janes Declaration, ¶
11 7(a)) (DUF 8) Plaintiff MERS Delaware depends on Plaintiff MERSCORP to act
12 for it. As will be seen these are two separate entities and they cannot be blurred.
13 (DUF 16) MERSCORP deceptively convinces its member lenders to place its
14 “child company” (MERS) in deeds of trust and mortgages. (DUF 16 & 20) But at
15 all times it owns and controls everything. Id. For example, in this case while
16 Plaintiff MERSCORP was registered in California since 1999, it is not a party with
17 the Robinsons or their real estate and loan transactions. (DUF 20) MERSCORP
18 rides the coat tails of its subsidiary MERS to claim its rights, but it has none of its
19 own rights and it has produced no assignment of MERS rights. (DUF 20) It admits
20 it’s non- involvement. (DUF 16) Unlike MERS whose name at least appears in the
21 DOT, MERSCORP’s name was not in the DOT or Note or anything that the
22 Robinsons executed. (DUF 16) Plaintiffs have also failed to produce an actual
23 agreement with UPM in this case that might give it standing or capacity to act as
24 claimed in their Amended Complaint, and required by the law of agency.

25 If there is an arrangement with the lender UPM, under Plaintiffs’ business
26 model, it would be with Plaintiff MERSCORP, not Plaintiff MERS. (DUF 21)
27 Although it is denied there is any such arrangement at all. Therefore, even if there
28 is an interest worthy of notice under the California Quiet Title statutes, it is an

1 interest that would be possessed by Plaintiff MERSCORP, not its wholly-owned
2 subsidiary, MERS. These two entities, are separate and distinct under the law, and
3 must stand on their own and be viewed separately. Neither have interest in the
4 Robinsons' property or Deed of Trust. (DUF 21)

5 Plaintiff MERS attempts to rely upon the DOT language to maintain its
6 standing and/or capacity to act, but, as noted above, and mentioned in more detail
7 with case citations, the borrower has no power or authority to grant a right or
8 interest in property ownership, let alone enter into a contract to give an
9 unregistered entity an agency or beneficiary relationship with another party. That
10 authority must come from a lender, and as noted above, UPM disavowed having
11 given out such an interest. (DUF 7, 8 & 9) The Robinsons, themselves disavow
12 such a grant. (DUF 7) Plaintiffs have failed to come forward to produce any such
13 documents or material to show some grant or rights.

14 Before this motion, counsel for the parties had a meet and confer, and the
15 undersigned asked if Plaintiffs wanted more time or needed more discovery. The
16 Plaintiffs answer was no. (See Murrin Declaration, ¶ 1)

17 Plaintiff MERS, is the entity listed in the DOT, was not registered to do
18 business in the State of California in 2005 when the Note and DOT were executed
19 and recorded. (DUF 11) It therefore lacks statutory capacity from the beginning
20 according to California Law.

21 Since the beginning of the loan on the Subject Property, the Robinsons
22 realized that their contact was with a servicer, not the lender, and that the servicer
23 had no accountability to them or anyone. Subsequently, the servicers started to
24 change and turnover. (DUF 12).

25 One of the servicers admitted making a mistake on how to account for the
26 taxes and insurance after improperly impounding monies and reporting them
27 delinquent. Another added on interest without cause. This resulted in the Robinsons
28

1 being reported adversely to the credit agencies and ruined their credit at the time.
2 (DUF 13).

3 Presently, there has been no adjustment to the principle balance on the loan.
4 The Robinsons have attempted numerous communications with the alleged
5 servicers, but no satisfactory adjustments to their Note have ever occurred. This is
6 what caused them to seek legal counsel. (DUF 14)

7 The Robinsons are not seeking to get out of paying a debt and they never
8 responded to such advertisements to do so. They are current on their payments.
9 Attorney Al West was recommended to the Robinsons by a personal source. (DUF
10 15). Al West does not maintain his own website, nor has he given permission to
11 anyone to act in his stead to set up and maintain a website, nor does he advertise or
12 suggest that a free house can be had through his services. See Declaration of Al
13 West. (DUF 15).

14 The only "Mortgage Electronic Registration Systems, Inc." (MERS) that
15 could have been in business in California when the Robinsons' bought the property
16 and took out the loan, is no longer in business, and was not in business in 2013
17 when Robinsons engaged the California Quiet Title procedure. There is no need to
18 give a defunct corporation notice under the Quiet Title.

19 Plaintiff MERS never perfected any other filing in public records or in land
20 or title records relating to the Robinsons case to distinguish itself from the
21 company of the same or similar name owned by Al Seastrand or to give them
22 notice they had such an interest. A search of the California Secretary of State
23 complete records does not show any company other than Seastrand's "Mortgage
24 Electronic Registration System, Inc." who was legally authorized to do business in
25 the state of California in 2005. (DUF 16).

26 This also justifies and or explains why Plaintiff MERS was rightfully served
27 as an unknown party pursuant to Code Civ.Proc. § 760.060(a), by publication. As
28 the declaration of Dan Robinson explains, when he did the Quiet Title action, he

1 looked and found the company that was in business under the name of Mortgage
 2 Electronic Registration Systems, Inc. to be no longer in business and never
 3 appreciated that there was another company by the same name until these
 4 proceeding were commenced. DUF 7. That in part was one of the reasons notice
 5 was not given to Mortgage Electronic Registration Systems, Inc as part of the
 6 Quiet Title action. (DUF 7)

7 Moreover, and maybe as important as anything, Plaintiffs cannot show that if
 8 federal relief is granted that they would be able to prevail if the matter goes back to
 9 another Quiet Title proceeding in the State of California. Unless, it can be shown
 10 that Plaintiff MERS can prevail, this action is futile and the case should be
 11 dismissed with prejudice. Further, if the California court provides a remedy, there
 12 is no need for a federal court's attention to this.

13 The following causes of action have been put forth by Plaintiffs. The
 14 Robinsons are requesting summary judgment as to each and every one or partial
 15 summary judgment (or summary adjudication) as to any one or more of them.
 16 They are:

- 17 1. Declaratory Judgment to set aside the California Quiet Title Judgment
- 18 2. Declaratory Judgment to challenge the constitutionality of the
 California Quiet Title Statutes
- 19 3. Cancellation of Written Instruments
- 20 4. Slander of Title

21 **III. DISCUSSION AND ANALYSIS**

22 **A. Standards on Summary Judgment**

23 Summary judgment is proper "if the pleadings' depositions, answers to
 24 interrogatories, and admissions on file, together with the affidavits, if any, show
 25 that there is no genuine issue as to any material fact and the moving party is
 26 entitled to a judgment as a matter of law." Fed R. Civ. P. 56, *Celotex Corp. v.*
 27 *Catrett*, 477 U.S. 317, 323 (1986); accord, *Mena v. City of Simi Valley*, 226 F.3d
 28 1031, 1036 (9th Cir. 2000). Summary judgment is appropriate only if "the movant

1 shows that there is no genuine issue as to any material fact and the movant is
 2 entitled to judgment as a matter of law.” Fed. Rule Civ. Proc. 56(a). In making that
 3 determination, a court must view the evidence “in the light most favorable to the
 4 opposing party.” *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970); *Anderson*
 5 *v. Liberty Lobby*, 477 U.S. 242, 255 (1986).

6 Summary judgment also lies on "all or part of a claim." Fed. R. Civ.
 7 Proc. 56(a). “The partial summary judgment is merely a pretrial adjudication that
 8 certain issues shall be deemed established for the trial of the case ... and likewise
 9 serves the purpose of speeding up litigation by eliminating before trial matters
 10 wherein there is no genuine issue of fact.” *Lahoti v. VeriCheck, Inc.*, 586 F.3d
 11 1190, 1202, fn. 6 (9th Cir. 2009), citing to Fed.R.Civ.P. 56(d) & advisory
 12 committee's note.

13 **B. Plaintiff MERSCORP Lacks Standing or Any Interest Related to**
 14 **This Matter, and Must be Dismissed**

15 Plaintiff MERSCORP is the parent company of subsidiary Plaintiff MERS,
 16 and was incorporated in Delaware. Plaintiff MERSCORP registered as a foreign
 17 corporation in California in 1999. (DUF 16) Plaintiff MERSCORP is not listed on
 18 the DOT, or promissory note, or other paperwork related to this matter. MERS is
 19 the only company listed on any Deed of Trust or Note. (DUF 1 & 2). The parent
 20 corporation (Plaintiff MERSCORP) admits that Plaintiff MERS is its wholly
 21 owned subsidiary, and that they have no legal, beneficial or agency interest in the
 22 loan interest (DUF 16).

23 Parent corporations are separate entities from their subsidiaries. They are
 24 unable to assert the interests of their subsidiaries and lack standing to sue. See
 25 *Schenley Distillers Corp. v. United States*, 326 U.S. 432, 435-36 (1946).
 26 "Corporate entities are presumed to have separate existences." See *Laird v. Capital*
 27 *Cities/ABC, Inc.*, 68 Cal.App.4th 727, 737 (Cal. 1998), overruled on other grounds,
 28 *Reid v. Google, Inc.*, 50 Cal.4th 512, 524 (Cal. 2010), accord, *Mesler v. Bragg*
Management Co., 39 Cal.3d 290, 300 (Cal. 1985).

1 A plaintiff has the burden to demonstrate standing for each claim that it
 2 asserts. See *Daimler Chrysler Corp. v. Cuno*, 547 US 332, 352 (2006). "Standing
 3 is not subject to waiver," *United States v. Hays*, 515 US 737, 742 (1995). To
 4 establish Article III standing, "a plaintiff's complaint must establish that he has a
 5 'personal stake' in the alleged dispute, and that the alleged injury suffered is
 6 particularized as to him." *Raines v. Byrd*, 521 US 811, 819 (1997).

7 Other state and federal jurisdictions concur. See *Mut. Holding Co. v.*
 8 *Limbach*, 71 Ohio St.3d 59, 60, 641 N.E.2d 1080 (Ohio 1994). "Generally, a parent
 9 and subsidiary are separate and distinct legal entities"; *Cent. States, Se. & Sw.*
 10 *Areas Pension Fund v. Reimer Express World Corp.*, 230 F.3d 934, 944 (7th
 11 Cir.2000), Parent corporations and their subsidiaries are "separate entities and the
 12 acts of one cannot be attributed to the other"; "There is that a parent corporation is
 13 separate entity from its subsidiary." *Brown v. Wells Fargo & Co.*, 284 F.R.D. 432,
 14 441 (D.Minn., 2012); See also *Valero S. Tex. Processing Co. v. Starr County*
 15 *Appraisal Dist.*, 954 S.W.2d 863, 866 (Tex.App. 1997), [For the purposes of legal
 16 proceedings, subsidiary corporations and parent corporations are separate and
 17 distinct "persons" as a matter of law, and the separate entity of corporations will
 18 generally be observed by the courts even where one company may dominate or
 19 control the other company, or treats the other company as a mere department,
 20 instrumentality, or agency.]

21 Thus, since Plaintiff MERSCORP chose to not have its name on the DOT or
 22 on any other mortgage paperwork, never mentioned themselves to the Robinsons.
 23 MERSCORP lacks standing to sue as they are not a real party at interest to any
 24 actions of the DOT at the time it was executed.

25 There is no genuine issue of fact as to Plaintiff MERSCORP's interest or
 26 lacking standing to sue, so the Robinsons are entitled to summary judgment as a
 27 matter of law.
 28

C. Plaintiff MERS Lacks Capacity to Contract Due to Not Having Been Empowered to Do Business in the State of California

With the Judgment for Quiet Title and the voiding and expungement of the DOT, MERS, without capacity at the time of the execution of the DOT and Note, lacks the capacity to bring an action against the Robinsons. It is believed that with the court being privileged to the new revelation that the Plaintiff MERS in effect is not the entity that had the power to use the name in 2005, or do business in California, that it must find all documents created voidable for Plaintiff MERS lack of capacity to contract in 2005. As a result, Plaintiff MERS acquired nothing and it has no standing or right to pursue legal claims under the California Quiet Title action. (DUF 5,10). A moot matter is not judiciable.

When debtors and a creditor enter into a note and deed of trust, those documents constitute one loan contract. See *Pacific Valley Bank v. Schwenke*, 189 Cal.App.3d 134, 141 (Cal. 1987). Included in the category of “persons capable of contracting” are private corporations. See *Dearborn v. Grand Lodge, A.O.U.W.*, 138 Cal. 658, 663 (Cal. 1903). Plaintiff MERS is a foreign corporation that was incorporated in Delaware, and by their name being put on this California DOT, was conducting business in California. A foreign corporation must obtain a certificate of qualification from California's Secretary of State in order to transact intrastate business. See Cal.Corp. Code § 2105 (a). Thus, even if Plaintiff MERS was the company meant in the DOT, it was illegal to do so without being registered as a foreign corporation with the California Secretary of State when the DOT was signed. (DUF 9) As noted before, Plaintiff MERS was not so registered.

In fact, Plaintiff MERS was illegally conducting business in California as a foreign corporation without paying corporate taxes owed. It is established that a contract entered into by a corporation not authorized to do business is voidable by the other party. See Cal. Rev. & Tax.Code § 23304.1 (a), *Myrick v. O'Neill*, 33 Cal.App.2d 644, 647–648 (Cal. 1939). That other party can have the contract

1 declared voidable in a lawsuit brought by either party with respect to the contract in
 2 a court of competent jurisdiction. See Cal. Rev. & Tax.Code § 23304.5,
 3 *Performance Plastering v. Richmond American Homes of California, Inc.*, 153
 4 Cal.App.4th 659, 669 (Cal. 2007). Even before California enacted these Revenue
 5 and Taxation codes, the U.S. Supreme Court recognized a common law right of
 6 States to sanction foreign corporations who violated its laws of incorporation and
 7 paying corporate taxes, having the right "[t]o impose conditions upon foreign
 8 corporations doing business in the state to the extent of holding the contracts of the
 9 corporation void which were entered into in violation of the conditions." *National*
 10 *Mut. Building & Loan Ass'n v. Brahan*, 193 U.S. 635, 650 (1904).

11 Specifically as to a deed of trust, in *Chattanooga Nat'l Bldg & Loan Ass'n v.*
 12 *Denson*, 189 U.S. 408, 413-15(1903), the United States Supreme Court voided an
 13 Alabama deed of trust where the foreign corporation was not licensed to do
 14 business in Alabama at the time that the deed of trust was signed. See also
 15 *Accurate Const. Co. v. Washington*, 378 A.2d 681, 683 (D.C. 1977), [Construction
 16 corporation, whose articles of incorporation had been revoked for failure to file
 17 annual reports at time that deed of trust was executed and determined to lack
 18 capacity to contract, and thus the deed of trust was void.] More recently in *Bank of*
 19 *America v. Nash*, No. 59-2011-CA-004389, * 2-3 (October 16, 2014, 18th Dist.
 20 Florida), a Florida state court held that parent company Bank of America did not
 21 have standing, nor did a subsidiary "America's Wholesale Lender", who did not
 22 have authority to do business in the State of Florida. A copy of this case is attached
 23 to the form requesting judicial notice of this case. This case is attached and
 24 judicial notice of it requested.

25 Here, Plaintiff MERS was a foreign corporation illegally conducting business
 26 in California in 2005 when the DOT was signed. Because of that and its failure to
 27 pay its taxes while conducting illegal business, this contract is voidable pursuant to
 28 Cal.Rev. & Tax.Code §§ 23304.1 (a) and 23304.5, and the common law. This court

1 should consider the DOT void as to Plaintiff MERS, or under the clean hands
2 doctrine, dismiss the case as something a federal court sitting in equity cannot
3 condone.

4 **D. Plaintiff MERS Lacks any Standing or fails to be able to show**
5 **that it has an enforceable interest that might qualify it for Notice**
6 **under the California Quiet Statutes**

7 Among the many claims by Plaintiff MERS is that they have an interest at
8 the level required to qualify for standing or under the California Quiet Title action.
9 It rests its entire case on it being a beneficiary or agent under the DOT. However,
10 Plaintiffs' uncontroverted declaration from UPM Corporate Officer Daryl
11 Wizelman provides the evidence that Plaintiff MERS was never a beneficiary,
12 agent or anything else worthy of notice under the California Quiet Title Statutes by
13 reason of this DOT. (DUF 9, 10)

14 Plaintiff MERS' own membership rule would not allow it to be such under
15 property deeds of trusts. (DUF 17)

16 "MERS shall have no rights whatsoever to retain any payments made
17 on account of a MERS Loan, to any servicing rights related to MERS
18 Loans, or to retain any mortgaged properties securing MERS Loans.
19 MERS agrees not to assert any rights (other than rights specified in the
20 Governing Documents) with respect to MERS Loans or mortgaged
21 properties." MERS 2013 Systems Rules of Membership, p. ii

22 Also in another document entitled Warehouse Lender Agreement (Exh. 61 at. p 8,
23 last para.), the following agreement seems to be an admission that MERS has no
24 interest:

25 MERS agrees that in no event shall MERS' status as mortgagee of record
26 with respect to any MERS Designated Mortgage Loan confer upon MERS
27 any rights or obligations as an owner or any MERS Designated Mortgage
28 Loan or the servicing rights related thereto, and MERS will not exercise
such right unless directed to do.

Unless, MERS comes forward to show that this or some right like that was
exercised, it cannot meet its burden to overcome Robinsons' request for Summary
Judgment. None has been disclosed during discovery.

1 Many courts fully reviewing the whole story to Plaintiff MERS' claims to
 2 being a beneficiary, have held that this is an intentional misstatement of the truth.
 3 See *Algarin v. CTX Mortg. Co., LLC*, 2011 WL 4356513, *1, fn.1 (D.Nev., 2011),
 4 "But it is obvious from the MERS' 'Terms and Conditions' that MERS is not a
 5 beneficiary as it has no rights whatsoever to any payments, to any servicing rights,
 6 or to any of the properties secured by the loans. To reverse an old adage, if it
 7 doesn't walk like a duck, talk like a duck, and quack like a duck, then it's not a
 8 duck. " *Gomez v. Countrywide Bank, FSB*, 2009 WL 3617650 at *2, fn. 1
 9 (D.Nev.2009); "Despite the wording of the deed of trust, MERS is not a
 10 beneficiary to the deed of trust. . . It cannot be stressed enough that calling MERS
 11 a beneficiary in a deed of trust does not make it so"; *Thoms v. America's Servicing*
 12 *Co.*, 2010 WL 3910083, *4 (D.Nev., 2010), "

13 Likewise MERS is not an agent either. UPM was the lender and beneficiary
 14 in the DOT. Plaintiff MERS uses the term in the DOT "nominee" (or agent) by
 15 unilateral fiat. Somehow, MERS believes they can create through the Robinson's
 16 signature only, in a deed of trust not signed by any principal, an agency between
 17 MERS and the lender and without UPM being involved or a signatory. MERS
 18 claims the Trustee, now U.S. Bank, has somehow given that power retroactively, but
 19 this can't be done retroactively, as one is either acting as an agent at the time or not.
 20 On top of that, UPM was the lender at the time. To be an agent, one must have a
 21 principal in place. But even if U.S. Bank could create a retroactive agency, there is
 22 nothing provided by Plaintiff MERS which shows that U.S. Bank, created such an
 23 agency relationship with it.

24 Plaintiff MERS is, in reality nothing more than an electronic registry of
 25 information that helps speed up the securitization of mortgages and forfeitures, and
 26 illegally avoids state and county registration laws (and fees). They use "Electronic
 27 Tracking Agreements," at Exhibit 60, "Gestation Agreements" at Exhibit 62,
 28 "Warehousing Lender Agreement," at Exhibit 61. (DUF 18) Plaintiff MERS also

1 has no power to act in any capacity that they claim. However, what they do not
2 have are actual principal/agent agreements.

3 Plaintiff MERS cannot ask this court essentially to overturn 164 years of
4 agency law and general ownership law in California to satisfy their "business
5 model," which is based upon a unilateral grant from the borrower not the principal
6 (the lender) to establish. Its business model wants to obliterate this law and pretend
7 that mutuality of contract with the principal is no longer necessary. They also
8 believe they can act for the principal without control or authority to act from a
9 principal. The Robinsons would like to see these agreements in the flesh. The
10 information from Mr. Wizelman, the owner of UPM and Mr. Janes an expert in
11 this area, contradicts what they say in this point.

12 **Under California law, MERS, as a nominee would not give MERS the**
13 **kind of interest it needs to prevail. "The word 'nominee' connotes the**
14 **delegation of authority to the nominee in a representative capacity only, and**
15 **does not connote the transfer or assignment to the nominee of any property in**
16 **or ownership of the rights of the person nominating him." See *Cisco v. Van Lew*,**
17 **60 Cal.App.2d 575, 583-84 (Cal. 1943).** Further, just because a party signs a deed of
18 trust, does not mean the agency and principal have worked out an agency agreement.
19 See *Pilgeram v. Greenpoint*, 373 Mont. 1, 9 (Mont., 2013), "the DOT only states
20 that 'Borrower understands and agrees' that MERS' was a nominee of the lenders,
21 not that the lenders themselves granted MERS authority."

22 UPM Corporate Officer Daryl Wizelman stated under penalty of perjury that
23 Plaintiff MERS was never an agent for them, and is unauthorized in claiming to be to
24 be an agent. (DUF 9, 10). The law indulges in no presumption that an agency exists,
25 but presumes that a person is acting for himself. See *Hathaway v. Siskiyou Union*
26 *High School Dist.*, 66 Cal.App.2d 103, 111 (Cal. 1944). Merely declaring yourself to
27 be an agent in a contract does not make you an agent. See *Gomez*, 2009 WL 3617650
28 at *2, fn. 1. Actual agency is "when the agent is really employed by the principal."
Cal.Civ.Code § 2299. The "formation of an agency relationship is a bilateral matter.

1 Words or conduct by both principal and agent are necessary to create the
 2 relationship....” *Van't Rood v. County of Santa Clara*, 113 Cal. App. 4th 549, 571 (Cal.
 3 2003). The Robinsons could not have ratified the claimed “agency” relationship of
 4 Plaintiff MERS when they had no knowledge of who Plaintiff MERS was in 2005
 5 when the DOT was signed (DUF 4), especially in light of the fact that this MERS
 6 entity was operating as an unregistered entity in the State of California.

7 Many courts have already held that Plaintiff MERS' claims of being an agent
 8 by calling themselves a “nominee” in the deeds of trust does not make them an
 9 agent, and is a deceitful claim. In *Bain v. Metropolitan Mortgage Group*, 175
 10 Wash.2d 83, 107 (Wn. 2012), the court held that the lender's nomination of MERS
 11 did not give rise to an agency relationship with successor noteholders so as to have
 12 authority to appoint a trustee to initiate foreclosure proceeding. Further, the *Bain*
 13 court held, as this court should, that Washington law requires agents to be
 14 controlled by a principal. *Id.*

15 **In fact, the facts show that MERS is neither an agent nor beneficiary,**
 16 **but nothing more than a straw man or Shell Corporation.** As such, Plaintiff
 17 MERS does not have a right to receive notice under the California Quiet Title
 18 statutes. See *Landmark Nat'l Bank v. Kesler*, 216 P.3d 158, 166 (Kan. 2009),
 19 which reads,

20 “the relationship that MERS as to Sovereign is more akin to that of a
 21 straw man than to a party possessing all the rights given a buyer”.

22 Plaintiffs MERS's very own Membership Rules establishes that they are also
 23 not an agent. See *In re Agard*, 444 B.R. 231, 252 (Bankr. E.D.N.Y. 2011), vacated
 24 in part, but not as to this finding, in *Agard v. Select Portfolio, Inc.*, No. 10-77338,
 25 2013 WL 1043690. The Robinsons’ expert firmly supports the scenario that
 26 MERS has no ownership or interest at any level entitling it to notice under the
 27 Quiet Title Statutes. See Exhibit B. Even, if Plaintiff MERS was an agent of
 28 UPM, under California law, they could not then unilaterally act or unilaterally
 define what the scope of their agency is, or operate as a “principal-less agent.” See

Cal.Civ. Code § 2322, "An authority expressed in general terms, however broad, does not authorize an agent to do any of the following: (a) Act in the agent's own name; or (b) Define the scope of the agency." What MERS has done violates this law and agency law in general. At the very least this information is sufficient for the federal court sitting in equity to dismiss this matter because it goes to MERS not having clean hands.

E. For All The Above Reasons, Plaintiff MERS Lacks Standing And Is Not Capable Of Owning Anything, Plaintiff MERSCORP, The Parent Company Owns Everything

As discussed above, Plaintiff MERS has no interest, and as a mere shell Corporation, controlled and owned by MERSCORP has been set up, by MERSCORP to own nothing. Because it is a shell and cannot own or do anything on its own, it cannot have an interest in anything for purposes of pursuing a Quiet Title Action. For additional proof that this is a mere shell corporation with these attributes, see again the expert report and declaration of Robert Janes, attached as Exhibit B.

There is no genuine issue of fact as Plaintiff MERS lacks standing to sue and/or is incapable of owning anything. The emperor truly has no clothes on despite any protestations to the contrary, and the Robinsons are entitled to summary judgment as a matter of law.

F. The Deed of Trust Should Also Be Set Aside as to Plaintiff MERS (Delaware) For Reasons of Unconscionability and Against Public Policy

The DOT itself should be voided as to Plaintiff MERS as the product of fraud and unconscionability. First, the DOT was not an arm's length agreement, it was an adhesive agreement, "[a] standardized contract, which, imposed and drafted by the party of superior bargaining strength, relegates to the subscribing party only the opportunity to adhere to the contract or reject it.' *Armendariz v. Foundation Health Psychcare Services, Inc.*, 24 Cal.4th 83, 113 (Cal. 2000).

1. The DOT as to Plaintiff MERS is Unconscionable as it Required the Robinsons to "Agree" to an Agency Relationship That Never Existed, and Involves MERS Conducting Business Illegally

1 The Robinsons did not know who Plaintiff MERS was when the DOT was
 2 given to them for signature. (DUF 3, 5) Also at that time, the Robinsons did not
 3 know that Plaintiff MERS was a foreign corporation not registered in California.
 4 Since no explanation was given who they are, how could the Robinsons know?
 5 The Robinsons also did not know that Plaintiff MERS was in fact not an agent or a
 6 beneficiary of UPM. (DUF 9, 10)

7 A contract may be held to be unconscionable pursuant to Cal.Civ.Code §
 8 1670.5, subdivision (a) states: "If the court as a matter of law finds the contract or
 9 any clause of the contract to have been unconscionable at the time it was made the
 10 court may refuse to enforce the contract, or it may enforce the remainder of the
 11 contract without the unconscionable clause, or it may so limit the application of
 12 any unconscionable clause as to avoid any unconscionable result." *Armendariz*, 24
 13 Cal.4th at 114.

14 Here, the adhesive nature of the DOT renders it unconscionable.
 15 Plaintiff MERS' falsely stating that they are a beneficiary and an agent when neither
 16 is true or ever existed in this case, and asking the Robinsons to agree to these
 17 falsehoods renders it substantively unconscionable. Because the Robinsons did not
 18 know that Plaintiff MERS was not legally authorized to conduct business in
 19 California and did not know that they were not an agent of UPM or beneficiary to
 20 the DOT, the DOT as to Plaintiff MERS is both procedurally and substantively
 21 unconscionable, and should be unenforceable as to Plaintiff MERS' claimed right to
 22 enforce any rights under the DOT.

23 **2. The DOT as to Plaintiff MERS is Void and Illegal, Against Public**
 24 **Policy as to Their Claims of Being a Beneficiary of the DOT and**
 25 **an Agent for UPM Were a Material Misrepresentation to the**
 26 **Robinsons**

27 As noted above, Plaintiff MERS is not a beneficiary to the DOT, and was not
 28 an agent for UPM. (DUF 9, 10, and 17) or anything else. These claims were
 deliberately misrepresented by Plaintiff MERS, and made without the authorization of
 UPM. These misstatements were deceitful and thus fraudulent contractual terms that

render the DOT void as to Plaintiff MERS' claimed right to enforce the rights under that contract.

A contract is unlawful in California law if it is contrary to the policy of express law, though not expressly prohibited, or contrary to good morals. See Cal.Civ.Code § 1667. An unlawful contract may not serve as the foundation of any action, either in law or in equity, and when the illegality of the contract renders the bargain unenforceable, a court will leave the parties where they were when the action was begun. See *Kashani v. Tsann Kuen China Enterprise Co., Ltd.*, 118 Cal.App.4th 531, 541 (Cal. 2004). “No principle of law is better settled than that a party to an illegal contract cannot come into a court of law and ask to have his illegal objects carried out ...” *Wong v. Tenneco, Inc.*, 39 Cal.3d 126, 135 (Cal. 1985).

G. There Is A Lack Of Material Facts To Support a Federal Subject Matter Jurisdiction Under Title 28 U.S.C. § 1331, and this Cause of Action Must Therefore Be Dismissed With Prejudice as to Plaintiff MERS

The only cause of action that supports federal jurisdiction is the second cause of action entitled “Declaratory Judgment for violation of due process under the 5th and 14th amendments of the United States Constitution and Article I. Section 7 of the California Constitution.”

First, this cause of action should fail for lack of a sufficient property interest as stated above, but even if the court finds a sufficient scenario, there is no due process violation under the federal constitution. The reasons for this are as follows:

Plaintiff MERS alleges that the California Quiet Title Statutes do not apply to it. They cite Cal.Code Civ.Proc. §§ 760.010-764.045, and say at ¶ 99 of the First Amended Complaint, that the California Quiet Title statutes “do not require notice of pending quiet title action(s) to those holding plainly recorded security interests in property.” If this is true, then no wrong or justiciable controversy is presented.

1 Asking a federal court to rule on the constitutionality of a matter that may not
2 create a harm is also a matter that fails for lack of ripeness. Thus, this is a non-
3 justiciable situation and one a federal court is not allowed to entertain. "Article III
4 justifiability is a prerequisite to reaching the merits of the dispute." *Renee v.*
5 *Duncan*, 623 F.3d 787, 795 (9th Cir. 2010).

6 Stated another way, Plaintiffs do not have a constitutional issue for the
7 following reasons:

8 1. There is nothing about the statutes that harms Plaintiff MERS because
9 they did not receive notice in this situation and Plaintiff MERS is not being affected
10 by lack of notice. Cal.Code Civ. Proc. § 764.045 provides that the judgment entered
11 in a Quiet Title action does not affect a claim in the property or a part thereof of any
12 persons who are not parties to the action if the claim was of record at the time in the
13 DOT, which it was. (Declaration of John Murrin, Ex. 37) (An undisputed fact,
14 although they were served by publication with all unknown parties.), and the claim
15 was actually known. This judgment does not affect Plaintiff MERS because they
16 were not made a party and they say their claim was of record.

17 2. If notice was not given properly, then that is a user issue (committed
18 by Robinsons and their lawyer), and is not a state action issue which is required to
19 reach a constitutional determination. This issue was discussed in *Miracle Properties*
20 *v. Kenly*, 412 F. Supp 1072 (1976), an action challenging the constitutionality of a
21 sale of real property by a deed of trust. In *Miracle Properties*, the court found the
22 regulations imposed in the state of Arizona for the sale of real property is a private
23 contractual arrangement are for the protection of all parties involved, and in no way
24 clothes the action as one with traditional state powers. *Id.* at 1075. "[S]tate action
25 may be found if, though only if, there is such a close nexus between the State and
26 the challenged action that seemingly private behavior may be fairly treated as that of
27 the State itself." *Villegas v. Gilroy Garlic Festival Ass'n*, 541 F.3d 950, 955 (9th
28 Cir.2008). Plaintiffs must demonstrate "a sufficiently close nexus between the State
and the challenged action of the regulated entity (action) so that the action of the

latter may be fairly treated as that of the State itself.” See *Jackson v. Metropolitan Edison Company*, 419 U.S. 345, 351 (1974). There are no facts to show a nexus in this situation.

Because no federal question exists as to the constitutionality of the California Quiet Title statutes, there is no genuine issue of fact, and the Robinsons are entitled to summary judgment.

H. To The Extent Plaintiff MERS' Claim is Equitable It Does Not Qualify and Must Be Dismissed

According to Plaintiffs’ opposition to Defendants’ Motion to Consolidate case. Page 1, and in page 1 of the Joint Stipulation regarding Plaintiff's Motion for a Protective Order, the Plaintiffs' say:

“Plaintiffs seek purely equitable relief in this action – declaration of invalidity of the quiet title judgment.” (See Plaintiffs' Opposition to Motion to Consolidate, No. 2:13-cv-07142, ECF No. 72 at 1)

Under the scenario that Plaintiffs are only presenting equitable claims, or only have equitable claims left, those claims are subject to scrutiny as qualifying for equitable relief. Plaintiffs, in fact, don't have clean hands, and are not entitled to equity in this case. Generally, the equitable doctrine called the clean hands doctrine requires a party seeking equity has conducted himself above boards in all respects. See *Precision Co. v. Automotive Co.*, 324 U.S. 806, 814-815 (1945). "The doctrine of unclean hands is a defense to an equitable action, including an action to quiet title. . .The doctrine demands that a plaintiff act fairly in the matter for which he seeks a remedy. He must come into court with clean hands, and keep them clean, or he will be denied relief, regardless of the merits of his claim." *Aguayo v. Amaro*, 213 Cal.App.4th 1102, 1110 (2013).

Plaintiff MERS does not come into this case with kind of clean hands. Perhaps few cases have as much uncleanliness as these characters. While this has been covered somewhat and is voluminous, here is a few of the examples that definitively show Plaintiffs are unworthy of equitable relief:

1. MERS was not registered in the State of California at the time in 2005 when this transaction took place. Until it became registered, it did not have the capacity to consent and enter into a contract so it is not entitled to equitable relief to enforce the contract. The parent company registered itself in 1999. It remains in good standing today. There is no excuse why MERS itself could not have been registered as well. That is 6 years of lost tax revenue to the state of California.
 2. Plaintiffs are not the entities that they say they are,
 3. Plaintiffs mix and match in the usage of the name and use it to deceive in violation of the Lanham Act above described.
 4. MERS claim to be a beneficiary when they are not one. It claims to be an agent when they are not one, and it claims to have no interest when the tax authorities want to tax them. See *Mortgage Electronic Registration System, Inc. v Nebraska Department of Banking Finance*, 270 Neb. 529 (2005).
 5. Plaintiffs are not a team. MERS is a shell and a manipulative device owned and operated by Plaintiff MERSCORP who in itself stays in the shadows or behind the scene but reaps all the benefits and keeps all the money.
 6. MERS is merely a front and a shell for Plaintiff Merscorp.
- Plaintiffs wants the court to condone its chameleon like characteristics.

These are misleading communications, calling itself a beneficiary, agent or straw man (DUF 9, 10, 17) and engaged in activity that deprives the local recording offices of valuable filing fees. Since Plaintiff MERS does not have any semblance of clean hands, the court as a court sitting in equity cannot hear this case. Thus, there are no genuine issues of fact as to Plaintiff MERS' unclean hands, and the Robinsons are entitled to summary judgment as a matter of law.

I. The 3rd Cause of Action for Cancellation of a Written Instrument Fails Because Plaintiff MERS Does Not Have An Interest in the Subject Property Due to it not having an interest in the Robinsons' Property or Security

Pursuant to Civ.Code § 3412, Grounds for Cancellation, any party with an interest may have any written instrument cancelled where "there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable."

1 However, as set forth hereinabove as Headnote C, Plaintiff MERS does not
 2 have capacity to contract because of their being a foreign corporation that had
 3 failed to register with the Secretary of State and had failed to pay their corporate
 4 taxes when the DOT was signed. (DUF 11) Also in Headnote D, Plaintiff MERS
 5 was not a beneficiary to the DOT and was not an agent for lender UPM, and its
 6 other interests are not sufficient to give the kind of interest required either standing
 7 to sue or the kind required under the California Quiet Title Statutes. (DUT 9, 10,
 8 and 17)

9 Like a cause of action for quiet title, a plaintiff “without any title or interest
 10 in the property one cannot maintain” a cause of action. See *Osborne v. Abels*, 30
 11 Cal.App.2d 729, 731 (Cal. 1939); see 12 Miller & Starr, *California Real Estate*, §
 12 34:112, at p. 34-382 (3d ed. 2008) [“A person who does not have an interest in a
 13 parcel of real property cannot bring an action to cancel a deed or mortgage
 14 regarding the property.”]. “As a general rule a party to the contract or a privy
 15 thereto, and he alone, is entitled to maintain a suit to cancel or rescind it, and one
 16 who is a stranger to, or has no interest in, the subject matter of the suit is not
 17 ordinarily entitled to such relief....” *Reina v. Erassarret*, 90 Cal.App.2d 418, 423-
 24 (Cal. 1949).

18 Because Plaintiff MERS lacks standing to sue and lacked capacity to
 19 contract as discussed above, and UPM did not convey it any interests, MERS is not
 20 in a position to cancel the Quite Title Judgment, and this case must be dismissed.
 21 Also claiming title based upon a DOT with flaws above described cannot
 22 withstand the requirements imposed by law on one who wants to bring a
 23 cancellation action. As such, the third cause of action should be properly
 24 dismissed.

25 There are no genuine issues of fact as to Plaintiff MERS's lack of standing to
 26 cancel written instruments under the Subject Property or DOT, and the Robinsons
 27 are entitled to summary judgment as a matter of law.

28 **J. The 4th Cause of Action for Slander of Title Fails Because
 California's Recognizes Absolute Litigation Privilege That Bars**

Recovery for Actions Arising Out of Recordation of Lis Pendens and Enforcement of Judgments

Plaintiff MERS cannot maintain the Slander of Title cause of action because it is based upon the recording of a lis pendens and judgment, two actions that have been held to be barred by the absolute litigation privilege. Plaintiffs claim defendants engaged in slander of title by recording of the lis pendens and judgment that flowed out of the Quiet Title action (DUF 19)

A Slander of Title cause of action fails because this cause of action arose out of litigation which is absolutely protected under the litigation privilege of Cal.Civ.Code § 47 (b). There is a practically identical federal privilege called the litigation privilege.

It is now settled in that a cause of action for Slander of Title based upon the filing of a lis pendens or a judgment and enforcement proceedings are absolutely privileged. The recording of written instruments from a Quiet Title action and Lis Pendens are absolutely privileged under Cal.Civ.Code § 47 (b). See *La Jolla Group II v. Bruce*, 211 Cal.App.4th 461, 474 (Cal. 2012). There is no “ ‘lack of evidentiary merit exception’ ” under the litigation privilege statutes. See *Alpha & Omega Development, LP v. Whillock Contracting, Inc.*, 200 Cal.App.4th 656, 666-67 (Cal. 2011). Further, any action for the execution of a judgment is also held to be absolutely privileged. Judgment enforcement efforts in connection in relation to levies and abstracts of judgment are privileged, “extension[s] of th[e] judicial process” likewise are “logically and legally related to the realization of a litigation objective—that is, collection of a judgment.” *Tom Jones Enterprises, Ltd. v. County of Los Angeles*, 212 Cal.App.4th 1283, 1296 (Cal. 2013).

Because of this absolute privilege, there are no material facts that can in any way provide Plaintiff MERS with any right to bring a cause of action for Slander of Title, and cause of action no. 4 must be dismissed as a matter of law.

As such, there are no genuine issues of fact as to the viability of the Slander of Title cause of action under the litigation privilege, and the Robinsons are entitled to summary judgment as a matter of law.

K. The Robinsons Maintain Their Right to a Jury Trial Which They Have Demanded Properly And Have Not Waived

"The Seventh Amendment guarantees the right to a jury trial "[i]n suits at common law, where the value in controversy shall exceed twenty dollars." *Palmer v. Valdez*, 560 F.3d 965, 968 (9th Cir. 2009). "We have consistently interpreted the phrase "Suits at common law" to refer to "suits in which legal rights were to be ascertained and determined, in contradistinction to those where equitable rights alone were recognized, and equitable remedies were administered." *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 41 (1989). The Robinsons are also entitled to have a right to a jury trial under Fed.R.Civ.P. 38 and 39. The Robinsons have not waived these rights and have requested them properly.

Of course, if this is a purely equitable case, no jury trial is mandated, but in that case, this being an equitable action, the court should dismiss Plaintiffs action for lack of clean hands as a matter of law for reasons discussed above. To the extent this is not completely an equitable action, then as to those issues a jury is required, although the court has the ability to submit all things to a jury. If the court does not rule as a matter of law, in the favor of the Robinsons then it is appropriate for a jury resolution upon a special verdict, of whether MERS has sufficient interest.

IV. CONCLUSION

Based upon the foregoing, this court should grant the Robinsons summary judgment, or in the alternative should grant partial summary judgment to those causes of action here where there is clearly no genuine issues of fact.

MURRIN LAW FIRM

Dated: January 12, 2015

/s/

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